

## Part 4

### Penalties, Interest, and Confidentiality of Information

#### **59-1-401 Definitions -- Offenses and penalties -- Rulemaking authority -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.**

(1) As used in this section:

- (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the commission:
  - (i) has implemented the commission's GenTax system; and
  - (ii) at least 30 days before implementing the commission's GenTax system as described in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website stating:
    - (A) the date the commission will implement the GenTax system with respect to the tax, fee, or charge; and
    - (B) that, at the time the commission implements the GenTax system with respect to the tax, fee, or charge:
      - (I) a person that files a return after the due date as described in Subsection (2)(a) is subject to the penalty described in Subsection (2)(c)(ii); and
      - (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is subject to the penalty described in Subsection (3)(b)(ii).
- (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or charge, the later of:
  - (i) the date on which the commission implements the commission's GenTax system with respect to the tax, fee, or charge; or
  - (ii) 30 days after the date the commission provides the notice described in Subsection (1)(a)(ii) with respect to the tax, fee, or charge.
- (c)
  - (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:
    - (A) a tax, fee, or charge the commission administers under:
      - (I) this title;
      - (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
      - (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
      - (IV) Section 19-6-410.5;
      - (V) Section 19-6-714;
      - (VI) Section 19-6-805;
      - (VII) Section 32B-2-304;
      - (VIII) Section 34A-2-202;
      - (IX) Section 40-6-14;
      - (X) Section 69-2-5;
      - (XI) Section 69-2-5.5; or
      - (XII) Section 69-2-5.6; or
    - (B) another amount that by statute is subject to a penalty imposed under this section.
  - (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
    - (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
    - (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
    - (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
    - (D) Chapter 3, Tax Equivalent Property Act; or

(E)Chapter 4, Privilege Tax.

- (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated tax, fee, or charge.

(2)

- (a) The due date for filing a return is:

- (i) if the person filing the return is not allowed by law an extension of time for filing the return, the day on which the return is due as provided by law; or
- (ii) if the person filing the return is allowed by law an extension of time for filing the return, the earlier of:
  - (A) the date the person files the return; or
  - (B) the last day of that extension of time as allowed by law.

- (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a return after the due date described in Subsection (2)(a).

- (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

- (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated tax, fee, or charge:
  - (A) \$20; or
  - (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
- (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax, fee, or charge, beginning on the activation date for the tax, fee, or charge:
  - (A) \$20; or
  - (B)
    - (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is filed no later than five days after the due date described in Subsection (2)(a);
    - (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed more than five days after the due date but no later than 15 days after the due date described in Subsection (2)(a); or
    - (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is filed more than 15 days after the due date described in Subsection (2)(a).

- (d) This Subsection (2) does not apply to:

- (i) an amended return; or
- (ii) a return with no tax due.

(3)

- (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

- (i) the person files a return on or before the due date for filing a return described in Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due date;

- (ii) the person:

- (A) is subject to a penalty under Subsection (2)(b); and
  - (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the due date for filing a return described in Subsection (2)(a);

- (iii)

- (A) the person is subject to a penalty under Subsection (2)(b); and
  - (B) the commission estimates an amount of tax due for that person in accordance with Subsection 59-1-1406(2);

- (iv) the person:

- (A) is mailed a notice of deficiency; and
  - (B) within a 30-day period after the day on which the notice of deficiency described in Subsection (3)(a)(iv)(A) is mailed:

- (I) does not file a petition for redetermination or a request for agency action; and
    - (II) fails to pay the tax, fee, or charge due on a return;
  - (v)
    - (A) the commission:
      - (I) issues an order constituting final agency action resulting from a timely filed petition for redetermination or a timely filed request for agency action; or
      - (II) is considered to have denied a request for reconsideration under Subsection 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed request for agency action; and
    - (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period after the date the commission:
      - (I) issues the order constituting final agency action described in Subsection (3)(a)(v)(A)(I); or
      - (II) is considered to have denied the request for reconsideration described in Subsection (3)(a)(v)(A)(II); or
  - (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date of a final judicial decision resulting from a timely filed petition for judicial review.
- (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
- (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an unactivated tax, fee, or charge:
    - (A) \$20; or
    - (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
  - (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an activated tax, fee, or charge, beginning on the activation date:
    - (A) \$20; or
    - (B)
      - (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid no later than five days after the due date for filing a return described in Subsection (2)(a);
      - (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid more than five days after the due date for filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or
      - (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a return described in Subsection (2)(a).
- (4)
- (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.
  - (b)
    - (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.
    - (ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:
      - (A) the original due date of the tax return, without extensions, for the taxable year; or
      - (B) with respect to any portion of the underpayment, the date on which that portion is paid.

- (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.
- (5)
  - (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a person allowed by law an extension of time for filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not including the extension of time, the person fails to pay:
    - (i) for a person filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or
    - (ii) for a person filing an individual income tax return under Chapter 10, Individual Income Tax Act, the payment required by Subsection 59-10-516(2).
  - (b) For purposes of Subsection (5)(a), the penalty per month during the period of the extension of time for filing the return is an amount equal to 2% of the tax due on the return, unpaid as of the day on which the return is due as provided by law.
- (6) If a person does not file a return within an extension of time allowed by Section 59-7-505 or 59-10-516, the person:
  - (a) is not subject to a penalty in the amount described in Subsection (5)(b); and
  - (b) is subject to a penalty in an amount equal to the sum of:
    - (i) a late file penalty in an amount equal to the greater of:
      - (A) \$20; or
      - (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time; and
    - (ii) a late pay penalty in an amount equal to the greater of:
      - (A) \$20; or
      - (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time.
- (7)
  - (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided in this Subsection (7)(a).
    - (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax, fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that is due to negligence.
    - (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire underpayment.
    - (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 50% of the entire underpayment.
    - (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.
  - (b) If the commission determines that a person is liable for a penalty imposed under Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed penalty.
    - (i) The notice of proposed penalty shall:
      - (A) set forth the basis of the assessment; and
      - (B) be mailed by certified mail, postage prepaid, to the person's last-known address.
    - (ii) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

- (A) pay the amount of the proposed penalty at the place and time stated in the notice; or
  - (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).
  - (iii) A person against whom a penalty is proposed in accordance with this Subsection (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.
  - (iv)
    - (A) If the commission determines that a person is liable for a penalty under this Subsection (7), the commission shall assess the penalty and give notice and demand for payment.
    - (B) The commission shall mail the notice and demand for payment described in Subsection (7)(b)(iv)(A):
      - (I) to the person's last-known address; and
      - (II) in accordance with Section 59-1-1404.
  - (c) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:
    - (i) a court of competent jurisdiction issues a final unappealable judgment or order determining that:
      - (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); and
      - (B) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); or
    - (ii) the commission issues a final unappealable administrative order determining that:
      - (A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); and
      - (B) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d).
  - (d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not subject to the penalty under Subsection (7)(a)(ii) if:
    - (i)
      - (A) a court of competent jurisdiction issues a final unappealable judgment or order determining that:
        - (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); and
        - (II) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); or
      - (B) the commission issues a final unappealable administrative order determining that:
        - (I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); and
        - (II) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); and
    - (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
- (8)

- (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an information return, information report, or a complete supporting schedule is \$50 for each information return, information report, or supporting schedule up to a maximum of \$1,000.
- (b) If an employer is subject to a penalty under Subsection (13), the employer may not be subject to a penalty under Subsection (8)(a).
- (c) If an employer is subject to a penalty under this Subsection (8) for failure to file a return in accordance with Subsection 59-10-406(3) on or before the due date described in Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this Subsection (8) unless the return is filed more than 14 days after the due date described in Subsection 59-10-406(3)(b)(ii).
- (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of a law relating to a tax, fee, or charge and files a purported return that fails to contain information from which the correctness of reported tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is substantially incorrect, the penalty is \$500.
- (10)
  - (a) A seller that fails to remit a tax, fee, or charge monthly as required by Subsection 59-12-108(1)(a):
    - (i) is subject to a penalty described in Subsection (2); and
    - (ii) may not retain the percentage of sales and use taxes that would otherwise be allowable under Subsection 59-12-108(2).
  - (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as required by Subsection 59-12-108(1)(a)(ii)(B):
    - (i) is subject to a penalty described in Subsection (2); and
    - (ii) may not retain the percentage of sales and use taxes that would otherwise be allowable under Subsection 59-12-108(2).
- (11)
  - (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:
    - (i) commits an act described in Subsection (11)(b) with respect to one or more of the following documents:
      - (A) a return;
      - (B) an affidavit;
      - (C) a claim; or
      - (D) a document similar to Subsections (11)(a)(i)(A) through (C);
    - (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i) will be used in connection with any material matter administered by the commission; and
    - (iii) knows that the document described in Subsection (11)(a)(i), if used in connection with any material matter administered by the commission, would result in an understatement of another person's liability for a tax, fee, or charge.
  - (b) The following acts apply to Subsection (11)(a)(i):
    - (i) preparing any portion of a document described in Subsection (11)(a)(i);
    - (ii) presenting any portion of a document described in Subsection (11)(a)(i);
    - (iii) procuring any portion of a document described in Subsection (11)(a)(i);
    - (iv) advising in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i);
    - (v) aiding in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i);

- (vi) assisting in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i); or
  - (vii) counseling in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i).
  - (c) For purposes of Subsection (11)(a), the penalty:
    - (i) shall be imposed by the commission;
    - (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
    - (iii) is in addition to any other penalty provided by law.
  - (d) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection (11).
  - (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections (11)(a)(i)(A) through (C).
- (12)
- (a) As provided in Section 76-8-1101, criminal offenses and penalties are as provided in Subsections (12)(b) through (e).
  - (b)
    - (i) A person who is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission, who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor.
    - (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the penalty may not:
      - (A) be less than \$500; or
      - (B) exceed \$1,000.
  - (c)
    - (i) With respect to a tax, fee, or charge, a person who knowingly and intentionally, and without a reasonable good faith basis, fails to make, render, sign, or verify a return within the time required by law or to supply information within the time required by law, or who makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false or fraudulent information, is guilty of a third degree felony.
    - (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the penalty may not:
      - (A) be less than \$1,000; or
      - (B) exceed \$5,000.
  - (d)
    - (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law, guilty of a second degree felony.
    - (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the penalty may not:
      - (A) be less than \$1,500; or
      - (B) exceed \$25,000.
  - (e)
    - (i) A person is guilty of a second degree felony if that person commits an act:
      - (A) described in Subsection (12)(e)(ii) with respect to one or more of the following documents:
        - (I) a return;

- (II) an affidavit;
- (III) a claim; or
- (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and
- (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in Subsection (12)(e)(i)(A):
  - (I) is false or fraudulent as to any material matter; and
  - (II) could be used in connection with any material matter administered by the commission.
- (ii) The following acts apply to Subsection (12)(e)(i):
  - (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);
  - (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
  - (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
  - (D) advising in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A);
  - (E) aiding in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A);
  - (F) assisting in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A); or
  - (G) counseling in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A).
- (iii) This Subsection (12)(e) applies:
  - (A) regardless of whether the person for which the document described in Subsection (12)(e)(i)(A) is prepared or presented:
    - (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
    - (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
  - (B) in addition to any other penalty provided by law.
- (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the penalty may not:
  - (A) be less than \$1,500; or
  - (B) exceed \$25,000.
- (v) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection (12)(e).
- (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections (12)(e)(i)(A)(I) through (III).
- (f) The statute of limitations for prosecution for a violation of this Subsection (12) is the later of six years:
  - (i) from the date the tax should have been remitted; or
  - (ii) after the day on which the person commits the criminal offense.
- (13)
  - (a) Subject to Subsection (13)(b), an employer that is required to file a form with the commission in accordance with Subsection 59-10-406(8) is subject to a penalty described in Subsection (13)(b) if the employer:
    - (i) fails to file the form with the commission in an electronic format approved by the commission as required by Subsection 59-10-406(8);
    - (ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);
    - (iii) fails to provide accurate information on the form; or
    - (iv) fails to provide all of the information required by the Internal Revenue Service to be contained on the form.



- (b) For purposes of Subsection (13)(a), the penalty is:
  - (i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the form in accordance with Subsection 59-10-406(8), more than 14 days after the due date provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in Subsection 59-10-406(8);
  - (ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the form in accordance with Subsection 59-10-406(8), more than 30 days after the due date provided in Subsection 59-10-406(8) but on or before June 1; or
  - (iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:
    - (A) files the form in accordance with Subsection 59-10-406(8) after June 1; or
    - (B) fails to file the form.
- (14) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Amended by Chapter 369, 2015 General Session

**59-1-402 Definitions -- Interest.**

- (1) As used in this section:
  - (a) "Final judicial decision" means a final ruling by a court of this state or the United States for which the time for any further review or proceeding has expired.
  - (b) "Retroactive application of a judicial decision" means the application of a final judicial decision that:
    - (i) invalidates a state or federal taxation statute; and
    - (ii) requires the state to provide a refund for an overpayment that was made:
      - (A) prior to the final judicial decision; or
      - (B) during the 180-day period after the final judicial decision.
  - (c)
    - (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:
      - (A) a tax, fee, or charge the commission administers under:
        - (I) this title;
        - (II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
        - (III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
        - (IV) Section 19-6-410.5;
        - (V) Section 19-6-714;
        - (VI) Section 19-6-805;
        - (VII) Section 32B-2-304;
        - (VIII) Section 34A-2-202;
        - (IX) Section 40-6-14;
        - (X) Section 69-2-5;
        - (XI) Section 69-2-5.5; or
        - (XII) Section 69-2-5.6; or
      - (B) another amount that by statute is subject to interest imposed under this section.
    - (ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
      - (A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;
      - (B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
      - (C) Chapter 2, Property Tax Act, except for Section 59-2-1309;
      - (D) Chapter 3, Tax Equivalent Property Act;
      - (E) Chapter 4, Privilege Tax; or

(F)Chapter 13, Part 5, Interstate Agreements.

- (2) Except as otherwise provided for by law, the interest rate for a calendar year for a tax, fee, or charge administered by the commission shall be calculated based on the federal short-term rate determined by the Secretary of the Treasury under Section 6621, Internal Revenue Code, in effect for the preceding fourth calendar quarter.
- (3) The interest rate calculation shall be as follows:
  - (a) except as provided in Subsection (7), in the case of an overpayment or refund, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate; or
  - (b) in the case of an underpayment, deficiency, or delinquency, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate.
- (4) Notwithstanding Subsection (2) or (3), the interest rate applicable to certain installment sales for purposes of a tax under Chapter 7, Corporate Franchise and Income Taxes, shall be determined in accordance with Section 453A, Internal Revenue Code, as provided in Section 59-7-112.
- (5)
  - (a) Except as provided in Subsection (5)(c), interest may not be allowed on an overpayment of a tax, fee, or charge if the overpayment of the tax, fee, or charge is refunded within:
    - (i) 45 days after the last date prescribed for filing the return with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, if the return is filed electronically; or
    - (ii) 90 days after the last date prescribed for filing the return:
      - (A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or
      - (B) if the return is not filed electronically.
  - (b) Except as provided in Subsection (5)(c), if the return is filed after the last date prescribed for filing the return, interest may not be allowed on the overpayment if the overpayment is refunded within:
    - (i) 45 days after the date the return is filed:
      - (A) with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; and
      - (B) if the return is filed electronically; or
    - (ii) 90 days after the date the return is filed:
      - (A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or
      - (B) if the return is not filed electronically.
  - (c)
    - (i) In the case of an amended return, interest on an overpayment shall be allowed:
      - (A) for a time period:
        - (I) that begins on the later of:
          - (Aa) the date the original return was filed; or
          - (Bb) the due date for filing the original return not including any extensions for filing the original return; and
        - (II) that ends on the date the commission receives the amended return; and
      - (B) if the commission does not make a refund of an overpayment under this Subsection (5)(c):
        - (I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically, within a 45-day period after the date the commission receives the amended return, for a time period:

- (Aa) that begins 46 days after the commission receives the amended return; and
- (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission completes processing the refund of the overpayment; or
- (II) if the amended return is with respect to a tax, fee, or charge except for a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, or is not filed electronically, within a 90-day period after the date the commission receives the amended return, for a time period:
  - (Aa) that begins 91 days after the commission receives the amended return; and
  - (Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission completes processing the refund of the overpayment.
- (ii) For purposes of Subsection (5)(c)(i)(B)(I)(Bb) or (5)(c)(i)(B)(II)(Bb), interest shall be calculated forward from the preparation date of the refund document to allow for processing.
- (6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.
- (7) Interest on a refund relating to a tax, fee, or charge may not be paid on any overpayment that arises from a statute that is determined to be invalid under state or federal law or declared unconstitutional under the constitution of the United States or Utah if the basis for the refund is the retroactive application of a judicial decision upholding the claim of unconstitutionality or the invalidation of a statute.

Amended by Chapter 357, 2012 General Session

**59-1-403 Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

- (1)
  - (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:
    - (i) a tax commissioner;
    - (ii) an agent, clerk, or other officer or employee of the commission; or
    - (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.
  - (b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:
    - (i) in accordance with judicial order;
    - (ii) on behalf of the commission in any action or proceeding under:
      - (A) this title; or
      - (B) other law under which persons are required to file returns with the commission;
    - (iii) on behalf of the commission in any action or proceeding to which the commission is a party;or
  - (iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.
  - (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.
- (2) This section does not prohibit:
  - (a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

- (b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and
- (c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:
  - (i) who brings action to set aside or review a tax based on the report or return;
  - (ii) against whom an action or proceeding is contemplated or has been instituted under this title; or
  - (iii) against whom the state has an unsatisfied money judgment.
- (3)
  - (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:
    - (i) the United States Internal Revenue Service; or
    - (ii) the revenue service of any other state.
  - (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.
  - (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.
  - (d) Notwithstanding Subsection (1), the commission shall provide to the director of the Division of Environmental Response and Remediation, as defined in Section 19-6-402, as requested by the director of the Division of Environmental Response and Remediation, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.
  - (e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:
    - (i) Chapter 13, Part 2, Motor Fuel; or
    - (ii) Chapter 13, Part 4, Aviation Fuel.
  - (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:
    - (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and
    - (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).
  - (g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).
  - (h) Notwithstanding Subsection (1), the commission may:

- (i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:
  - (A) reported to the commission under Section 59-14-212; or
  - (B) related to a violation under Section 59-14-211; and
- (ii) upon request, provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).
- (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, the Office of the Legislative Fiscal Analyst, or the Governor's Office of Management and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.
- (j) Notwithstanding Subsection (1), the commission shall make the directory required by Section 59-14-603 available for public inspection.
- (k) Notwithstanding Subsection (1), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).
- (l)
  - (i) Notwithstanding Subsection (1), the commission shall provide the Office of Recovery Services within the Department of Human Services any relevant information obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.
  - (ii) The information described in Subsection (3)(l)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing that support obligation.
- (m)
  - (i) Notwithstanding Subsection (1), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and Social Security number on resident returns filed under Chapter 10, Individual Income Tax Act.
  - (ii) The state court administrator may use the information described in Subsection (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.
- (n) Notwithstanding Subsection (1), the commission shall at the request of a committee, commission, or task force of the Legislature provide to the committee, commission, or task force of the Legislature any information relating to a tax imposed under Chapter 9, Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.
- (o)
  - (i) As used in this Subsection (3)(o), "office" means the:
    - (A) Office of the Legislative Fiscal Analyst; or
    - (B) Office of Legislative Research and General Counsel.
  - (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii), the commission shall at the request of an office provide to the office all information:
    - (A) gained by the commission; and
    - (B) required to be attached to or included in returns filed with the commission.
  - (iii)
    - (A) An office may not request and the commission may not provide to an office a person's:
      - (I) address;
      - (II) name;
      - (III) Social Security number; or
      - (IV) taxpayer identification number.

- (B) The commission shall in all instances protect the privacy of a person as required by Subsection (3)(o)(iii)(A).
- (iv) An office may provide information received from the commission in accordance with this Subsection (3)(o) only:
  - (A) as:
    - (I) a fiscal estimate;
    - (II) fiscal note information; or
    - (III) statistical information; and
  - (B) if the information is classified to prevent the identification of a particular return.
- (v)
  - (A) A person may not request information from an office under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if that office received the information from the commission in accordance with this Subsection (3)(o).
  - (B) An office may not provide to a person that requests information in accordance with Subsection (3)(o)(v)(A) any information other than the information the office provides in accordance with Subsection (3)(o)(iv).
- (p) Notwithstanding Subsection (1), the commission may provide to the governing board of the agreement or a taxing official of another state, the District of Columbia, the United States, or a territory of the United States:
  - (i) the following relating to an agreement sales and use tax:
    - (A) information contained in a return filed with the commission;
    - (B) information contained in a report filed with the commission;
    - (C) a schedule related to Subsection (3)(p)(i)(A) or (B); or
    - (D) a document filed with the commission; or
  - (ii) a report of an audit or investigation made with respect to an agreement sales and use tax.
- (q) Notwithstanding Subsection (1), the commission may provide information concerning a taxpayer's state income tax return or state income tax withholding information to the Driver License Division if the Driver License Division:
  - (i) requests the information; and
  - (ii) provides the commission with a signed release form from the taxpayer allowing the Driver License Division access to the information.
- (r) Notwithstanding Subsection (1), the commission shall provide to the Utah Communications Authority, or a division of the Utah Communications Authority, the information requested by the authority under Sections 63H-7a-302, 63H-7a-402, and 63H-7a-502.
- (s) Notwithstanding Subsection (1), the commission shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.
- (t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the Department of Health or its designee with the adjusted gross income of an individual if:
  - (i) an eligibility worker with the Department of Health or its designee requests the information from the commission; and
  - (ii) the eligibility worker has complied with the identity verification and consent provisions of Sections 26-18-2.5 and 26-40-105.
- (u) Notwithstanding Subsection (1), the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in accordance with

Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

- (4)
  - (a) Each report and return shall be preserved for at least three years.
  - (b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.
- (5)
  - (a) Any person who violates this section is guilty of a class A misdemeanor.
  - (b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.
  - (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with Subsection (3)(o)(v):
    - (i) is not guilty of a class A misdemeanor; and
    - (ii) is not subject to:
      - (A) dismissal from office in accordance with Subsection (5)(b); or
      - (B) disqualification from holding public office in accordance with Subsection (5)(b).
- (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Amended by Chapter 411, 2015 General Session

Amended by Chapter 451, 2015 General Session

**59-1-404 Definitions -- Confidentiality of commercial information obtained from a property taxpayer or derived from the commercial information -- Rulemaking authority -- Exceptions -- Written explanation -- Signature requirements -- Retention of signed explanation by employer -- Penalty.**

- (1) As used in this section:
  - (a) "Appraiser" means an individual who holds an appraiser's certificate or license issued by the Division of Real Estate under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act and includes an individual associated with an appraiser who assists the appraiser in preparing an appraisal.
  - (b) "Appraisal" is as defined in Section 61-2g-102.
  - (c)
    - (i) "Commercial information" means:
      - (A) information of a commercial nature obtained from a property taxpayer regarding the property taxpayer's property; or
      - (B) information derived from the information described in this Subsection (1)(c)(i).
    - (ii)
      - (A) "Commercial information" does not include information regarding a property taxpayer's property if the information is intended for public use.
      - (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (1)(c)(ii)(A), the commission may by rule prescribe the circumstances under which information is intended for public use.
  - (d) "Consultation service" is as defined in Section 61-2g-102.
  - (e) "Locally assessed property" means property that is assessed by a county assessor in accordance with Chapter 2, Part 3, County Assessment.
  - (f) "Property taxpayer" means a person that:

- (i) is a property owner; or
    - (ii) has in effect a contract with a property owner to:
      - (A) make filings on behalf of the property owner;
      - (B) process appeals on behalf of the property owner; or
      - (C) pay a tax under Chapter 2, Property Tax Act, on the property owner's property.
  - (g) "Property taxpayer's property" means property with respect to which a property taxpayer:
    - (i) owns the property;
    - (ii) makes filings relating to the property;
    - (iii) processes appeals relating to the property; or
    - (iv) pays a tax under Chapter 2, Property Tax Act, on the property.
  - (h) "Protected commercial information" means commercial information that:
    - (i) identifies a specific property taxpayer; or
    - (ii) would reasonably lead to the identity of a specific property taxpayer.
- (2) An individual listed under Subsection 59-1-403(1)(a) may not disclose commercial information:
- (a) obtained in the course of performing any duty that the individual listed under Subsection 59-1-403(1)(a) performs under Chapter 2, Property Tax Act; or
  - (b) relating to an action or proceeding:
    - (i) with respect to a tax imposed on property in accordance with Chapter 2, Property Tax Act; and
    - (ii) that is filed in accordance with:
      - (A) this chapter;
      - (B) Chapter 2, Property Tax Act; or
      - (C) this chapter and Chapter 2, Property Tax Act.
- (3)
- (a) Notwithstanding Subsection (2) and subject to Subsection (3)(b), an individual listed under Subsection 59-1-403(1)(a) may disclose the following information:
    - (i) the assessed value of property;
    - (ii) the tax rate imposed on property;
    - (iii) a legal description of property;
    - (iv) the physical description or characteristics of property, including a street address or parcel number for the property;
    - (v) the square footage or acreage of property;
    - (vi) the square footage of improvements on property;
    - (vii) the name of a property taxpayer;
    - (viii) the mailing address of a property taxpayer;
    - (ix) the amount of a property tax:
      - (A) assessed on property;
      - (B) due on property;
      - (C) collected on property;
      - (D) abated on property; or
      - (E) deferred on property;
    - (x) the amount of the following relating to property taxes due on property:
      - (A) interest;
      - (B) costs; or
      - (C) other charges;
    - (xi) the tax status of property, including:
      - (A) an exemption;
      - (B) a property classification;



- (C) a bankruptcy filing; or
- (D) whether the property is the subject of an action or proceeding under this title;
- (xii) information relating to a tax sale of property; or
- (xiii) information relating to single-family residential property.
- (b)
  - (i) Subject to Subsection (3)(b)(ii), a person may receive the information described in Subsection (3)(a) in written format.
  - (ii) The following may charge a reasonable fee to cover the actual cost of providing the information described in Subsection (3)(a) in written format:
    - (A) the commission;
    - (B) a county;
    - (C) a city; or
    - (D) a town.
- (4)
  - (a) Notwithstanding Subsection (2) and except as provided in Subsection (4)(c), an individual listed under Subsection 59-1-403(1)(a) shall disclose commercial information:
    - (i) in accordance with judicial order;
    - (ii) on behalf of the commission in any action or proceeding:
      - (A) under this title;
      - (B) under another law under which a property taxpayer is required to disclose commercial information; or
      - (C) to which the commission is a party;
    - (iii) on behalf of any party to any action or proceeding under this title if the commercial information is directly involved in the action or proceeding; or
    - (iv) if the requirements of Subsection (4)(b) are met, that is:
      - (A) relevant to an action or proceeding:
        - (I) filed in accordance with this title; and
        - (II) involving property; or
      - (B) in preparation for an action or proceeding involving property.
  - (b) Commercial information shall be disclosed in accordance with Subsection (4)(a)(iv):
    - (i) if the commercial information is obtained from:
      - (A) a real estate agent if the real estate agent is not a property taxpayer of the property that is the subject of the action or proceeding;
      - (B) an appraiser if the appraiser:
        - (I) is not a property taxpayer of the property that is the subject of the action or proceeding; and
        - (II) did not receive the commercial information pursuant to Subsection (8);
      - (C) a property manager if the property manager is not a property taxpayer of the property that is the subject of the action or proceeding; or
      - (D) a property taxpayer other than a property taxpayer of the property that is the subject of the action or proceeding;
    - (ii) regardless of whether the commercial information is disclosed in more than one action or proceeding; and
    - (iii)
      - (A) if a county board of equalization conducts the action or proceeding, the county board of equalization takes action to provide that any commercial information disclosed during the action or proceeding may not be disclosed by any person conducting or participating in the action or proceeding except as specifically allowed by this section;

- (B) if the commission conducts the action or proceeding, the commission enters a protective order or, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, makes rules specifying that any commercial information disclosed during the action or proceeding may not be disclosed by any person conducting or participating in the action or proceeding except as specifically allowed by this section; or
- (C) if a court of competent jurisdiction conducts the action or proceeding, the court enters a protective order specifying that any commercial information disclosed during the action or proceeding may not be disclosed by any person conducting or participating in the action or proceeding except as specifically allowed by this section.
- (c) Notwithstanding Subsection (4)(a), a court may require the production of, and may admit in evidence, commercial information that is specifically pertinent to the action or proceeding.
- (5) Notwithstanding Subsection (2), this section does not prohibit:
  - (a) the following from receiving a copy of any commercial information relating to the basis for assessing a tax that is charged to a property taxpayer:
    - (i) the property taxpayer;
    - (ii) a duly authorized representative of the property taxpayer;
    - (iii) a person that has in effect a contract with the property taxpayer to:
      - (A) make filings on behalf of the property taxpayer;
      - (B) process appeals on behalf of the property taxpayer; or
      - (C) pay a tax under Chapter 2, Property Tax Act, on the property taxpayer's property;
    - (iv) a property taxpayer that purchases property from another property taxpayer; or
    - (v) a person that the property taxpayer designates in writing as being authorized to receive the commercial information;
  - (b) the publication of statistics as long as the statistics are classified to prevent the identification of a particular property taxpayer's commercial information; or
  - (c) the inspection by the attorney general or other legal representative of the state or a legal representative of a political subdivision of the state of the commercial information of a property taxpayer:
    - (i) that brings action to set aside or review a tax or property valuation based on the commercial information;
    - (ii) against which an action or proceeding is contemplated or has been instituted under this title; or
    - (iii) against which the state or a political subdivision of the state has an unsatisfied money judgment.
- (6) Notwithstanding Subsection (2), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule establish standards authorizing an individual listed under Subsection 59-1-403(1)(a) to disclose commercial information:
  - (a)
    - (i) in a published decision; or
    - (ii) in carrying out official duties; and
  - (b) if that individual listed under Subsection 59-1-403(1)(a) consults with the property taxpayer that provided the commercial information.
- (7) Notwithstanding Subsection (2):
  - (a) an individual listed under Subsection 59-1-403(1)(a) may share commercial information with the following:
    - (i) another individual listed in Subsection 59-1-403(1)(a)(i) or (ii); or
    - (ii) a representative, agent, clerk, or other officer or employee of a county as required to fulfill an obligation created by Chapter 2, Property Tax Act;

- (b) an individual listed under Subsection 59-1-403(1)(a) may perform the following to fulfill an obligation created by Chapter 2, Property Tax Act:
    - (i) publish notice;
    - (ii) provide notice; or
    - (iii) file a lien; or
  - (c) the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions or the federal government grant substantially similar privileges to this state.
- (8) Notwithstanding Subsection (2):
- (a) subject to the limitations in this section, an individual described in Subsection 59-1-403(1)(a) may share the following commercial information with an appraiser:
    - (i) the sales price of locally assessed property and the related financing terms;
    - (ii) capitalization rates and related rates and ratios related to the valuation of locally assessed property; and
    - (iii) income and expense information related to the valuation of locally assessed property; and
  - (b) except as provided in Subsection (4), an appraiser who receives commercial information:
    - (i) may disclose the commercial information:
      - (A) to an individual described in Subsection 59-1-403(1)(a);
      - (B) to an appraiser;
      - (C) in an appraisal if protected commercial information is removed to protect its confidential nature; or
      - (D) in performing a consultation service if protected commercial information is not disclosed; and
    - (ii) may not use the commercial information:
      - (A) for a purpose other than to prepare an appraisal or perform a consultation service; or
      - (B) for a purpose intended to be, or which could reasonably be foreseen to be, anti-competitive to a property taxpayer.
- (9)
- (a) The commission shall:
    - (i) prepare a written explanation of this section; and
    - (ii) make the written explanation described in Subsection (9)(a)(i) available to the public.
  - (b) An employer of a person described in Subsection 59-1-403(1)(a) shall:
    - (i) provide the written explanation described in Subsection (9)(a)(i) to each person described in Subsection 59-1-403(1)(a) who is reasonably likely to receive commercial information;
    - (ii) require each person who receives a written explanation in accordance with Subsection (9)(b)(i) to:
      - (A) read the written explanation; and
      - (B) sign the written explanation; and
    - (iii) retain each written explanation that is signed in accordance with Subsection (9)(b)(ii) for a time period:
      - (A) beginning on the day on which a person signs the written explanation in accordance with Subsection (9)(b)(ii); and
      - (B) ending six years after the day on which the employment of the person described in Subsection (9)(b)(iii)(A) by the employer terminates.
  - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule define "employer."

(10)

- (a) An individual described in Subsection (1)(a) or 59-1-403(1)(a), or an individual that violates a protective order or similar limitation entered pursuant to Subsection (4)(b)(iii), is guilty of a class A misdemeanor if that person:
  - (i) intentionally discloses commercial information in violation of this section; and
  - (ii) knows that the disclosure described in Subsection (10)(a)(i) is prohibited by this section.
- (b) If the individual described in Subsection (10)(a) is an officer or employee of the state or a county and is convicted of violating this section, the individual shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.
- (c) If the individual described in Subsection (10)(a) is an appraiser, the appraiser shall forfeit any certification or license received under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, for a period of five years.
- (d) If the individual described in Subsection (10)(a) is an individual associated with an appraiser who assists the appraiser in preparing appraisals, the individual shall be prohibited from becoming licensed or certified under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, for a period of five years.

Amended by Chapter 289, 2011 General Session

**59-1-405 Commission consideration of confidential tax matters.**

- (1) As used in this section, "confidential tax matter" means:
  - (a) an offer in compromise;
  - (b) a private letter ruling;
  - (c) an appeal before the members of the commission;
  - (d) a tax matter if the disclosure of the tax matter is prohibited under:
    - (i) federal law;
    - (ii) Section 59-1-403; or
    - (iii) Section 59-1-404;
  - (e) a voluntary disclosure agreement; or
  - (f) a waiver request.
- (2) Notwithstanding Title 52, Chapter 4, Open and Public Meetings Act, the commission may hold a meeting that is not open to the public to conduct a hearing on, discuss, or take action on a confidential tax matter in accordance with the rules established as provided under this section.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:
  - (a) to establish procedures for holding a meeting that is not open to the public to conduct a hearing on, discuss, or take action on a confidential tax matter; and
  - (b) except as provided in Subsection (4), to establish procedures and requirements for keeping confidential minutes and a confidential recording of a meeting that is not open to the public.
- (4) For purposes of Subsection (3)(b), the commission is not required to make rules to establish procedures and requirements for keeping confidential minutes and a confidential recording of:
  - (a) an initial hearing to the extent provided in Section 59-1-502.5; or
  - (b) private analysis, contemplation, and discussion by members of the commission:
    - (i) in performing the judicial aspects of their duties; and
    - (ii) consistent with state case law.

Enacted by Chapter 215, 2011 General Session

